IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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:: JUDGMENT ::

United India Insurance Co. Ltd. Vs. Smt.Havwali & ors.

S.B.CIVIL MISC. APPEAL NO.257/1994

Against the award dated 28.08.1991 made by the Motor Accidents Claims Tribunal, Barmer in Claim Case No.53/1989.

Date of Judgment ::: 12.10.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. P.K.Bhansali, for the appellant.
Mr. M.L.Khatri, for the respondents.

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BY THE COURT:

The insurer of the vehicle involved in the accident has preferred this appeal against the award dated 28.08.1991 made by the Motor Accidents Claims Tribunal, Barmer in Claim Case No.53/1989 whereby the Tribunal has awarded compensation in the sum of Rs.1,10,400/- in favour of the claimants on account of accidental death of Sachchu (35 years), husband of claimant No.1, son of claimant No.2 and father of claimant Nos.3 to 5; and has mulcted liability for payment of compensation amount upon the appellant.

Three contentions have been put forward on behalf of the appellant-insurer by learned counsel while questioning the award: (i) that the vehicle in question was a goods vehicle and the deceased was alleged to be a Khalasi thereat and, therefore, liability of the insurer could not have been beyond that required to meet the liability under the Workmen's Compensation Act, 1923 as contemplated by sub-section (2) of Section 95 of the Motor Vehicles Act, 1939; (ii) that the Tribunal has not made award against the insured, owner of the vehicle, and in absence of any liability having been determined against the insured, no corresponding liability could have been fastened on the insurer and, therefore, direction to the insurer to make payment remains wholly contrary to law; and (iii) that the claim application was filed after a delay of 22 months from the date of accident and the delay was not properly explained and, therefore, the claim application was liable to be rejected.

Brief reference to the facts of the case for the purpose of the questions posed in this appeal may be made. The claim application aforesaid was filed on 03.07.1989 by the claimants against the driver, owner and insurer of the truck bearing registration No. GTF 3675 with the submissions that the truck in question capsized near Bachhadau on Barmer-Dhorimanna road in the night intervening 24th and 25th of November, 1987 causing extensive injuries to Sachchu, an occupant of the

truck, who succumbed to injuries on the spot. The claimants asserted that the deceased was healthy in 35 years of age and was a cleaner on the truck in question and also used to handle the goods in the absence of labourers and was earning Rs. 900/- per month while working as cleaner and labourer. In paragraph-11 of the claim application, the claimants stated thus:

> "वक्त दुर्घटना मृतक सच्चू 35 वर्ष का हष्ट पुष्ट एवं स्वस्थ चित्त नवयुवक था जो इसी ट्रक में क्लीनर था तथा मजदूरों के अभाव में ट्रक का सामान भी ढो देता था। क्लीनर के रूप में एवं मजदूर के रूप में कुल वह 900/- नौ सौ रूपये प्रति माह आय अर्जित करता था।"

Pointing out the deceased to be bread earner of the family, the claimants sought compensation in the sum of Rs.3,76,000/-. An application under Section 5 of the Limitation Act was also submitted with the claim application wherein claimant No.1, wife of the deceased, submitted that she was required to undergo mourning period according to the community customs for about 1 ½ years and she came back to Barmer from her parental house on 05.05.1989 and then contacted the lawyer and got the claim application filed.

The claim application was contested by the insurer with the submissions that the deceased was working as Khalasi on

the truck but was earning only Rs.200-300/- per month. The averments in paragraph-11 of the claim application were also denied with the averments that income of the deceased was about Rs.200-300/- per month and that the claimant Nos.1 and 2 were also engaged in labour and were not wholly dependent on the deceased and that deceased was a member of scheduled tribe hence was buried according to the community rites and not cremated. The averments of the application under Section 5 of the Limitation Act were also denied with the submissions that in the community of the claimants, there were no strict customs nor they were bound by Hindu Law and, therefore, claim application was liable to be rejected being barred by limitation.

On the pleadings of the parties, the Tribunal framed the following issues for determination of the questions involved in the case:

> "1. आया दिनांक 25.11.87 की रात्रि को वाहन सं0 जी0 टी0 एफ 0 3675 के चालक गोमसिंह ने उक्त वाहन को तेज गति व लापरवाही से चलाकर,बाछडाऊ से डेढ़ किलोमीटर, बाड़मेर की तरफ दुर्घटना कारित की, जिससे सच्चू की मृत्यु हो गयी ?
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> 2. आया प्रार्थीगण, प्रार्थना पत्र के पद सं0 11 माफिक मुआवजा प्राप्त करने के हकदार है, यदि हां, तो किस कदर ?
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> 3. आया क्लेम मियाद बाहर है ?

4. आया मृतक इस वाहन में यात्री था, इस कारण उक्त बीमा कंपनी जिम्मेदार नहीं है ?

5. दादरसी ।"

In evidence, the claimants examined wife of the deceased Havwali as AW-1, another occupant of the offending vehicle at the time of accident Kana as AW-2 and a relative of the claimants Tiloka Ram as AW-3. On behalf of the appellant-insurer, their Branch Manager at Barmer Arun Kumar Sharma was examined as NAW-1. The parties also produced relevant documentary evidence including a copy of insurance certificate as Ex.A/1.

After hearing the parties, the Tribunal noticed in issue No.1 that deceased was admitted to be a Khalasi on the truck in question by its owner by filing a separate affidavit though he did not appear in evidence. The Tribunal referred to the evidence on record to the effect that the accident occurred for the truck capsizing because of the driver Gom Singh driving it sleepily and falling in a nap. The Tribunal, therefore, decided issue No.1 in favour of the claimants by holding that the accident occurred for rash and negligent driving of the truck by its driver that resulted in death of Sachchu. While taking up quantification of compensation in issue No.2, the Tribunal

took monthly income of the deceased at Rs.900/- and contribution for the claimants at Rs.600/- per month; then applied a multiplier of 15 to a multiplicand of Rs. 7,200/- to assess pecuniary loss at Rs.1,08,000/-. The Tribunal denied the amount for funeral expenses but allowed non-pecuniary loss in the sum of Rs.30,000/- for the wife, mother and three children of the deceased and thereby arrived at a figure of loss at Rs.1,38,000/- but then deducted 20% of this amount because of lump sum payment and, therefore, held the claimants entitled for a sum of Rs.1,10,400/-.

Taking up the question of limitation in issue No.3 the Tribunal referred to the facts submitted by the claimants about their status as members of scheduled tribe and being poor and illiterate villagers and observed that the facts asserted by the claimant No.1 in her affidavit were not rebutted and in the facts and circumstances, it would not be in the interest of justice to reject the claim application as barred by time.

Taking up the question of liability of the insurer in issue No.4 the Tribunal noticed that NAW-1 examined on behalf of the insurer has stated that the vehicle was insured with them and according to the policy the risk of driver, cleaner, six coolies and third party were covered but this witness has not shown that the deceased Sachchu was simply a passenger in the vehicle; and on the contrary, it was clear from the previous

discussion that he was a Khalasi on the vehicle in question. Issue No.4 was, therefore, decided against the insurer.

For granting relief in issue No.5 the Tribunal held the claimants entitled for compensation in the sum of Rs.1,10,400/- and observed that the liability of the insurer was upto Rs.1,50,000/- under Section 95 of the Motor Vehicles Act, 1939 and, therefore, held the insurer liable to make payment of the amount of award in this case. The Tribunal apportioned the award amount by allowing Rs.26,400/- to the wife of the deceased and Rs.21,000/- each to the remaining four claimants.

The Tribunal has, therefore, proceeded to make award allowing compensation in the sum of Rs.1,10,400/- to the claimants; observed that the payment of award amount shall be made by the insurer; issued necessary directions for apportionment, disbursement and deposit of the award amount; and also allowed interest @ 12% per annum from the date of filing of claim application. The insurer has assailed the award on the grounds as noticed at the outset.

Having given a thoughtful consideration to the submissions made on behalf of the appellant-insurer and having examined the impugned award and the record, this Court is satisfied that this appeal remains totally bereft of substance and rather the insurer does not even seem justified

in putting forward the grounds and contentions as made in this appeal.

So far the liability of the appellant-insurer under the policy in question is concerned, a look at the insurance certificate produced by the appellant Ex.A/1 makes it apparent that the appellant has taken Rs.64/- as premium for legal liability towards driver, cleaner and six coolies. The Branch Manager of the insurer NAW-1 has only stated that,-

> "कि गाड़ी G.F.T. 3675 हमारी कम्पनी में बीमीत है ट्रक मालिक तारसिंह दीपसिंह है । इसकी पालिसी (अपठित) पेश की है उसके अनुसार ड्राईवर क्लीनर व 6 कुली व थर्ड पार्टी की रिस्क कवर है।
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> XXX
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> मरने वाले कुली हो तो मुझे पता नहीं। छ कुलीयों के हमारे यहाँ नाम इन्टर कराने का प्रावधान नहीं । मालिक मरजी से रख सकता है।"

In the face of such cryptic statement, it is difficult to appreciate the submission regarding limited liability of the insurer in respect of Khalasi of the vehicle as sought to be asserted in this appeal. Noteworthy it is that such objection regarding limits of its liability, as sought to be taken in this appeal, has not even been raised in its reply by the appellant-insurer. Even otherwise, in the fact situation of the present

case and in the context of the award in question, the appellant-insurer does not appear justified in raising this ground.

In relation to the hyper-technical submission about the award having not been made against the owner of the vehicle and, therefore, fastening of liability on the appellant being not justified, suffice is to say that the contention is more of form rather than of substance. The finding by the Tribunal on issue No.1 is explicit and specific where the accident in question has been held to have occurred for the fault of the driver of the vehicle in question resulting in death of Sachchu. In issue No.2 the claimants have been held entitled for compensation in the sum of Rs.1,10,400/- after deducting 20% of the amount of assessed loss in the name of lump sum payment. The Tribunal having found the claimants entitled for amount of compensation observed that upto the amount of Rs.1,50,000/- the insurer was liable and, therefore, what the Tribunal has done is to issue directions for the appellant to make payment of the award amount. Such directions in effect remain in conformity with Section 110-B of the Act of 1939 and Section 168 of the Act of 1988 where the Tribunal is required to specify the amount which is to be paid by the insurer, owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be. Learned counsel Mr. P.K. Bhansali appearing for the appellant-insurer, without citing referred to a

decision of this Court in the case of Smt.Shakuntala and submitted that a prayer for allowing interest that has been disallowed by the Tribunal was declined by this Court for want of the owner of the vehicle being on record. The principles as referred by the learned counsel have no relevance to the present case.

In the present case, the driver and owner of the vehicle in question were impleaded as parties and were represented before the Tribunal; and the Tribunal has specifically found the claimants entitled for compensation for loss caused to them because of accidental death of Sachchu due to the negligence of the truck driver. A comprehensive look at the findings on all the issues in ultimate analysis makes it clear that though the Tribunal in its award has omitted to state initial liability of the driver and owner in specific terms and words but the award carries such meaning only. Logical conclusion of the findings on issues Nos. 1 & 2 cannot be ignored by mere reference to the form of expression used by the Tribunal. The insurer has only been directed to make payment as required by Section 110-B of the Act of 1939 and Section168 of the Act of 1988. The contention regarding the award having not been made against the owner of the vehicle remains hollow and deserves to be rejected.

So far the delay in filing the claim application is concerned, it sounds rather inappropriate that suggestion has been made by none other than an insurer even after amendment to Section 166 of the Motor Vehicles Act, 1988 that claim application ought to be rejected on account of delay in filing. The Tribunal has referred to the uncontroverted evidence of the claimant of her being detained inside the house because of the family rites and customs and has taken into consideration the status of the claimants who are shown to the members of scheduled tribe and being poor and illiterate persons. Nevertheless, the claim application was submitted on 03.07.1989; and in any case, such submission about delay in filing the claim application is of no avail after deletion of Sub-Section (3) of Section 166 of the Act of 1988 by the Amendment Act of 1994. Learned counsel for the appellant has referred to a decision of the Hon'ble Supreme Court in Vinod Gurudas Raikar Vs. National Insurance Company Ltd. and others: 1991 ACJ 1060. Suffice is to say in this regard that the law relating to the effect of amendment to Section 166 of the Act of 1988 has specifically been explained and settled by the Hon'ble Supreme Court in the case of Dhannalal Vs. D.P.Vijayvargiya and others: AIR 1996 SC 2155 and the submissions as sought to be made by the insurer in this appeal stand squarely contrary to the dictum of the Hon'ble

Supreme Court. It may be pointed out that even though the claim application was belated and a ground was raised in this appeal that the claim application ought to have been rejected on the ground of limitation; yet, the appeal having remained pending, the claim application was required to be considered on merits in view of the amendment to Section 166, deleting the provision relating to limitation for filing of the claim application as held by the Hon'ble Supreme Court in Dhannalal's case. This court in the case of Ashpurn Singh Vs. Shambhu Ram & others: S.B. Civil Misc. Appeal No.219/1993 decided on 21.07.2006 observed thus:

> "Having heard learned counsel for the parties, this Court is of opinion that in view of the law laid down by the Hon'ble Supreme Court in Dhannalal's case (supra), deletion of sub-section (3) of Section 166 of the Motor Vehicles Act appertains to the benefit of appellant-claimant in the present case too as the matter is pending consideration before this Court. The Hon'ble Supreme Court has clearly laid down that the benefit of amendment of sub-section (3) of Section 166 applies to the cases where the matter is pending either before the Tribunal or before the High Court or before the Supreme Court. The present appeal having been admitted on 16.07.1993 and having remained pending before this Court, there is no reason to deny the benefit of amendment to sub-section (3) of Section 166 to the petitioner and, therefore, the claim application deserves to be considered on merits."

The Tribunal having already dealt with the matter on merits, the plea of bar of limitation upon the claim application as raised in this appeal cannot be countenanced at this stage.

The submissions made on behalf of the appellant-insurer in this appeal are, therefore, untenable and deserve to be rejected.

The result of the discussion aforesaid would have been only of dismissal of the appeal; but it is noticed that the Tribunal has been quite restrictive in its award of compensation and though no cross-objections have been filed by the claimants, however, in view of the fact that the insurer has pressed this appeal on fundamentally untenable grounds and the appeal is being dismissed, it is considered appropriate and in the interest of justice to at least remove out the obvious deficiency in the award in question arising because of deduction of 20% from out of the amount of assessed loss towards lump sum payment. There is no reason to deny the claimants the amount of Rs.1,38,000/- already assessed by the Tribunal as the loss suffered by them; and deduction of 20% of the assessed amount in the name of lump sum payment seems wholly unjustified. On the facts and in the circumstances of this case, the award in question deserves modification under Order 41 Rule 33 of the Code of Civil Procedure to the extent of allowing the claimants the deducted

amount of Rs.27,600/- so as to bring the award in conformity with the requirements of allowing just compensation.

Accordingly, this appeal is dismissed. However, the award in question is modified under Order 41 Rule 33 CPC and the claimants are allowed compensation in the sum of Rs.1,38,000/- as determined by the Tribunal in issue No.2 and the proposition deducting 20% of the amount i.e. Rs.27,600/- because of lump sum payment is annulled.

It shall be required of the appellant-insurer to deposit the amount payable under the modified award within 30 days from today with the Tribunal and the Tribunal shall proceed with appropriate disbursement. The amount payable to the claimants having been enhanced, there shall be no further order as to costs.

(DINESH MAHESHWARI),J.

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